

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. J-05/09-295
)
 Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Office of Vermont Health Access (OVHA) denying her request for an exception under M108 for coverage for dentures under the Medicaid program. The issue is whether the petitioner has shown that serious detrimental health consequences will occur if she does not receive dentures.

FINDINGS OF FACT

1. The petitioner is a fifty-year-old woman with a history of multiple medical and dental problems. In March 2009 her treating physician and dentist requested Medicaid coverage for dentures. In his request the physician submitted the following description of the petitioner's condition:

Chronic dental infections which are affecting her diabetes control and not allowing her to get epidural injections for her chronic LBP (lower back pain). I recommend that she have all her remaining teeth extracted and get dentures.

2. In his request, the petitioner's dentist gave a detailed summary of the petitioner's medical and dental histories and provided a list of the medications she has been prescribed. His request listed the following "extenuating circumstances":

1. Virtually impossible to control her chronic pain, methadone and neurontin dosages with her constant dental pain.

2. Difficult to control diabetes because of Multiple Dental Abscess.

3. Need dentures for adequate nutrition (control) of diabetes and overall general health.

3. The dentist's request also noted that the petitioner still needed "10 routine extractions" but that she had reached the limit of her benefit for the year for these services.

4. In a letter dated April 6, 2009 the petitioner's dentist provided the Department with the following additional information:

About the patient's chronic dental infections. She has been a patient with us for 8 years. She had 3 episodes of dental infection in 2001 resulting in Antibiotics prescription 3 times and 3 dental extractions. She had preventive care with us since, including 6 months cleanings and an impressive total of 46 new or recurrent decay, restored every time. 1 tooth got infected in 2005 and treated with a root canal treatment. Another got infected in 2007 resulting in an extraction. And more recently in 2009, 2 emergency appointments with dental abscess have resulting in 4 more extractions. At

which point I decided with the patient that it was better for her to proceed with the remaining extractions.

About her neck/back problems and diabetes, I don't have more details than what I already gave you, you would have to check with her physician.

About her unique health status, in addition to what I already gave you for information. There is the fact that the patient has a poor diet, has anxiety and is a past drug addicted. Her dental rehabilitation with dentures is at the center of her general health rehabilitation to improve her diet, reduce her anxiety, reduce her risk of doing drugs again, and prevent future detrimental health consequences.

Consequences could be but are not limited to: Depression, severe anxiety, drug relapse, uncontrolled diabetes with all that it entails (diabetic coma, cecity, obesity, cardiac disease, etc), gastric reflex, etc.

5. On June 4, the petitioner's treating physician provided this follow-up letter:

[Petitioner] has been a patient of mine since 2002. She has the following medical problems: Chronic neck and back pain; history of heroin addiction; diabetes Type II; anxiety disorder; smoker; hepatitis C; herpes simplex virus. Her medication list is enclosed.

I am recommending that [petitioner] have full dental extractions done and dentures made. She has had significant problems with dentition, some of it probably partly related to poor dentition in the past, but also due to some of her medications. She has been going regularly to the dentist and getting extractions done as needed, but she has also had various dental infections and this has compromised her ability to have other medical conditions attended to. She had to have a spinal epidural injection delayed because of an infection. The spinal epidural injections have been

beneficial for her low back pain and it would be nice to have to delay those when they are needed.

At this point, her Medicaid benefit for dental work will not become available until January 2010, and even at that point I do not believe it would cover all of the extractions nor the dentures.

Regarding the dentures, [petitioner] is diabetic and her optimal diet would include fresh fruits and vegetables, which can be quite difficult to eat without dentition. At this point, I strongly recommend that she have dentures so that she can have an appropriate diet and be able to have adequate dentition to eat appropriately as well.

6. The above letters must be deemed sufficient to establish that the petitioner has an emergency medical need to proceed immediately with the extraction of her remaining teeth even though the cost of this will far exceed the annual \$495 Medicaid limit on such services. At the hearings in this matter (held on July 8 and August 12, 2009) the petitioner was advised to apply for General Assistance (GA) to cover these services, and of her right to appeal if this application is denied.

7. Unfortunately, at least at this time, the issue of the medical necessity for dentures is another matter. Based on the above evidence, it cannot be concluded that the petitioner couldn't reasonably be expected to adequately meet her nutritional needs, including the control of her diabetes,

through modifications in her diet and alternative food preparation methods.

ORDER

The Department's decision is affirmed.

REASONS

As a cost-saving measure, the state has eliminated coverage of dentures for all adult Medicaid beneficiaries. W.A.M. § M621.6. However, OVHA has a procedure for requesting exceptions to its non-coverage, which requires the recipient to provide information about her situation and supporting documentation. M108. OVHA must then review the information in relation to a number of criteria as set forth below:

1. Are there extenuating circumstances that are unique to the beneficiary such that there would be serious detrimental health consequences if the service or item were not provided?
2. Does the service or item fit within a category or subcategory of services offered by the Vermont Medicaid program for adults?
3. Has the service or item been identified in rule as not covered, and has new evidence about efficacy been presented or discovered?
4. Is the service or item consistent with the objective of Title XIX?
5. Is there a rational basis for excluding coverage of the service or item? The purpose of this criterion

is to ensure that the department does not arbitrarily deny coverage for a service or item. The department may not deny an individual coverage of a service or item solely based on its cost.

6. Is the service or item experimental or investigational?
7. Have the medical appropriateness and efficacy of the service or item been demonstrated in the literature or by experts in the field?
8. Are there less expensive, medically appropriate alternatives not covered or not generally available?
9. Is FDA approval required, and if so, has the service or item been approved?
10. Is the service or item primarily and customarily used to serve a medical purpose, and is it generally not useful to an individual in the absence of an illness, injury, or disability?

The Board has held that M108 decisions are within the discretion of the Department and will not be overturned unless OVHA has clearly abused its discretion by either failing to consider and address all of the pertinent medical evidence under each criterion set forth above or by reaching a result that cannot be reasonably supported by the evidence. See, e.g. Fair Hearing No. 20,986.

The Board has specifically upheld the Department's denial of an M108 exception for dentures in cases where the petitioner did not demonstrate that the lack of teeth would likely result in serious detrimental health consequences

given the apparent availability and appropriateness of alternative means of maintaining proper nutrition (i.e., alternative diet choices and eating pureed food). *Id.* In the instant case, the evidence submitted by the petitioner's medical providers simply does not establish that dentures are *required* to maintain her physical or mental health.

The petitioner is, of course, free to obtain a more detailed and thorough medical evaluation of her need for dentures, and to reapply for an M108 exception.¹ If it is unreasonable to expect that she can meet her nutritional needs with a modified diet, her doctors should explain why. However, based on the evidence that has been submitted to date on the petitioner's behalf, it cannot be concluded that OVHA has abused its discretion in its assessment that the petitioner has not demonstrated that either her physical or mental health is likely to worsen significantly if she is not provided with dentures once her remaining teeth are extracted. Thus, the Board is bound to affirm the Department's decision. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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¹ This would include the right to appeal any subsequent M108 decision that is unfavorable.